



MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

FROM: Nina E. Olson /s/ October 4, 2006
National Taxpayer Advocate

SUBJECT: Common Sense and Good Judgment
In Case Processing II
(Replaces Memorandum dated 13 January 2005))

Taxpayer Advocate Service (TAS) case processing presents a challenge for all of us in TAS, because our case levels are affected not only by fluctuations in IRS activities and systemic issues but also by external factors, including new legislation, natural disasters, and the general environment. For case advocates in particular, the press of new and continuing cases can be daunting and leads us to lose sight of how very important this work is.

For many taxpayers, the TAS case advocate is the one person in the IRS who has the time to listen to them and fully address their tax problems. Therefore, we do not want our case procedures to be so cumbersome that case advocates feel like they are just checking items off a list and are no longer advocating for the taxpayer. On the other hand, TAS employees must adhere to certain procedures that are designed to properly implement the congressional mandates and direction found in IRC §§ 7803 and 7811, including the identification of systemic problems and their solutions.

As the National Taxpayer Advocate, it is my responsibility to ensure that our procedures help – not impede – us to fulfill our mission, without imposing unnecessary burden on TAS employees. TAS employees, in return, must try to understand why a given procedure is necessary to TAS's mission, and suggest procedures that might better achieve that goal.

There are few decisions as important to the taxpayer and to case advocates as whether the taxpayer's case comes in to TAS and what we do once we accept it. As our inventory has increased over the last two years, I have reviewed our guidance on case criteria, case acceptance, significant hardship, and Taxpayer

Assistance Orders (TAOs). While the guidance is helpful, it does not really provide a rationale for case processing – a common sense approach that helps us briefly step above the trees to see the forest as a whole. The following discussion and direction are meant to do just that.

Introduction

On January 6, 2006, the Taxpayer Advocate Service introduced some clarifications to its case acceptance criteria by memorandum captioned “Implementation of the Clarified TAS Case Acceptance Criteria.” These changes were designed to help TAS case advocates, IRS employees, and taxpayers better understand when a case qualifies for acceptance in TAS, and when a case qualifies for issuance of a Taxpayer Assistance Order under IRC § 7811.

This memorandum expands upon the guidance issued in January 2006. It outlines several key steps and factors a TAS employee should consider when working a taxpayer’s case. This guidance does not state anything really new – it merely suggests a way of thinking about TAS casework that integrates into a single approach various issues with which we are all familiar. This memorandum will be incorporated into the next revision of IRM 13.

Terminology Matters

It is important not to confuse the concept of “hardship” and the concept of “significant hardship.” In order to issue a Taxpayer Assistance Order (TAO), IRC § 7811 requires that the taxpayer be suffering or about to suffer a significant hardship. *TAS’s ability to work cases and assist taxpayers covers a broader range, however, than the circumstances for which TAS can issue a TAO.* A case should be accepted into TAS based on the case acceptance criteria (Criteria 1 through 9).

The decision of whether a TAO can be issued because of a significant hardship within the meaning of IRC § 7811 is a separate decision from whether the taxpayer is suffering a hardship that qualifies for TAS assistance under Criteria 1 through 4. TAS’s ability to issue a TAO because of a significant hardship is an option in certain circumstances for resolving a case, but significant hardship is not the basis for accepting a case into TAS.

You will see places in IRM 13 that refer to “hardship.” Again, do not confuse “hardship” with “significant hardship.” Such references to “hardship” generally should be viewed in the context of Criteria 1 through 4 as references to economic burden. In order to accept a case into TAS under Criteria 1 through 4, the

taxpayer must allege that the hardship presents an economic burden. The nature of the economic burden will dictate under which specific Criteria TAS (1, 2, 3, or 4) should accept the case.

Using the right terms is important in case processing. For example, we changed the term formerly used in our case criteria to designate Criteria 1 through 4 from “economic hardship” to “economic burden.” We did this because TAS and IRS employees alike were confusing the idea of what it takes to get into TAS as a case with what it takes to get relief from a levy under IRC § 6343(a)(1)(D) (where the term “economic hardship” is used in the Code to allow for release of levy). These are two different concepts. Meeting TAS’s economic burden case criteria does not automatically qualify the taxpayer for relief under IRC § 6343(a)(1)(D) economic hardship.

TAS Case Criteria and IRC § 7811

This memorandum discusses four essential components of TAS case processing. They are:

- The Case Acceptance Determination
- The Relief/Documentation Determination
- The OAR/Expedite Determination
- The 7811 Significant Hardship Determination

Step one: The Case Acceptance Determination

The case acceptance determination may take place before the case is assigned to you as a case advocate. Generally, TAS accepts cases under Criteria 1 through 4 on the belief that there is an economic burden. Whether an economic burden exists to warrant relief, however, will depend on the facts and circumstances in each case as well as the information/documentation provided by the taxpayer or that you discovered during the course of working the case.

Here’s a general approach to TAS case acceptance. Ask yourself:

- Does the TP have an economic burden? (criteria 1 –4)
- If not, does the TP have a systemic burden? (criteria 5-7)
- If not, does the TP’s case raise any issue of taxpayer rights or inequitable treatment? (criteria 8)
- If not, is the TP’s case included in categories designated by the National Taxpayer Advocate as a Public Policy case? (criteria 9)

Note: Only the NTA can designate a group of cases as Criteria 9 cases. If a case involves an issue designated as Criteria 9, you should first determine whether it fits under Criteria 1 through 8. The case should only be designated Criteria 9 if it does not meet any other case criteria.

If the case does not meet any of the above criteria, the case does not qualify for TAS assistance. Of course, we need to be as helpful and compassionate as possible to a taxpayer whose case we cannot accept, and we should try to direct the taxpayer where to go for help and attempt to put the taxpayer in touch with an IRS employee who can help with the problem, if possible. We should also remind the taxpayer that he or she may become eligible for TAS assistance if the IRS does not resolve the problem.

Step Two: The Relief/Documentation Determination

After you make the case criteria determination, you will work the case per IRM 13 and other guidance. Under current procedures, we ask the taxpayer for documentation when we know what relief is appropriate to resolve the problem. For example, where the taxpayer needs a levy release under IRC § 6343(a), Case Advocates should check the regulations and IRM and determine what documentation you must send to the function to obtain a levy release.

Remember: When asking the taxpayer to provide documentation, tailor the documentation request to the relief you are seeking. Don't ask for unnecessary information. However, you should try to obtain the information that will make the most convincing case for relief.

The January 2006 Case Criteria memorandum introduced one significant change to TAS case processing. We will no longer ask the taxpayer to "validate the hardship" as a prerequisite to accepting cases involving criteria 1 through 4. Requiring a taxpayer to send in documentation of a hardship before beginning to work the case wasted taxpayer and case advocate time, delayed relief, and often required the taxpayer to obtain documentation that was unnecessary for the ultimate relief requested.

Thus, TAS case advocates now classify a taxpayer's case based on their determination of which criteria best fits the taxpayer's situation. Case advocates should use their best judgment in making this classification decision. Being the skilled interviewers they are, I am confident that case advocates' judgment, based on their knowledge of the facts and circumstances before them, will be

very accurate. Where we later discover that a case better fits another criteria, we should note that fact in the case history. And of course, TAS will continue to monitor case criteria accuracy to identify trends and to provide relevant training.

Step Three: The OAR/Expedite Determination

The third step in TAS case processing is the “OAR/Expedite Determination.” Under the current Service Level Agreements, OARs on criteria 1 through 4 cases receive Expedite treatment from the functions, and OARS on criteria 5 through 7 cases receive priority treatment (*i.e.*, there is a little more flexibility with respect to deadlines).

We are in the process of revising our Service Level Agreements (SLAs). Once they are revised, we will have a slightly different approach to expediting cases. This approach will focus on the particular facts of a case rather than the criteria code selected by TAS. Under the new SLAs, you should ask yourself:

- Given the facts in this taxpayer’s case, does this OAR need to be handled expeditiously?

Thus, you may have a Criteria 1 case in which the manual refund needs to be expedited but the audit reconsideration of the underlying tax liability does not need to be expedited. On the other hand, you may have a Criteria 7 case that involves a taxpayer who has been unsuccessfully trying to resolve his issue for 2 1/2 years. That taxpayer should not have to wait another day for resolution, so that case may need to be expedited!

Step Four: Significant Hardship Determination

“Significant Hardship” comes into play after you have decided what relief you are going to give the taxpayer and when you have to determine if the LTA has the authority to issue a Taxpayer Assistance Order under IRC § 7811 and the 7811 regulations.

When making a § 7811 “Significant Hardship” determination, ask yourself:

- Does the taxpayer face an immediate threat of adverse action? (IRC § 7811(a)(2)(A))
- Has the taxpayer experienced a delay of more than 30 days in resolving taxpayer account problems? (IRC § 7811(a)(2)(B))
- Will the taxpayer incur significant costs (including fees for professional representation) if relief is not granted? (IRC § 7811(a)(2)(C))

- Will there be irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted? (IRC § 7811(a)(2)(D))
- Is there a serious privation caused or about to be caused to the taxpayer as a result of the particular manner in which the revenue laws are being administered by the IRS? (Treas. Reg. § 301.7811-1(a)(4)(ii)) (Note that the regulations state that serious privation is more than mere inconvenience, economic or otherwise. Serious privation can include being deprived of taxpayer rights as well as tangible property.)

Note: If the IRS has not followed its published administrative guidance (including the IRM) in the course of the case, TAS shall construe the factors it considers in deciding to issue a TAO in the manner most favorable to the taxpayer. (IRC § 7811(a)(3)).

A Final Word About Case Processing

Remember that we are taxpayer advocates. Congress has not asked us to judge the taxpayer. Rather, Congress has asked us to help taxpayers resolve their problems with the IRS and to identify the underlying causes of those problems. As taxpayer advocates, we should point out misconceptions, educate taxpayers about their mistakes, and show them how to avoid future problems. We can even decline to take a case because the taxpayer has “hopscotched” over normal IRS procedures or because the taxpayer is a “frequent flyer.”

But we must always try to see things first from the taxpayer’s perspective – how confusing, intimidating, and frustrating it can be to try to resolve a problem with the IRS. Never forget that. That’s why TAS exists – to help taxpayers solve their problems with the IRS – case by case and systemically.

I welcome your comments and suggestions for improving case processing, and on the contents of this memo. Send all such questions to the [*TAS NTA Questions](#) mailbox. I will be directly involved in the review of and responses to your questions, with the responses delivered through the TAS website and the Wednesday Weekly.